

**Response Under 37 C.F.R. § 1.116
Expedited Processing
Group Art Unit: 3628**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket No.: 003797.86776

Group Art Unit: 3628

Examiner: Frantzy Poinvil

Confirmation No.: 7450

For: **SYSTEM AND METHOD FOR
CREATING MODEL
INVESTMENT PORTFOLIOS**

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OCT 1 2004

PETITION FOR EXTENSION OF TIME AND RESPONSE UNDER 37 C.F.R. § 1.116 **GROUP 3600**

Commissioner for Patents
U.S. Patent and Trademark Office
220 20th Street South
Customer Window
BOX: AF
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir:

Please extend the period for responding to the May 6, 2004, Final Office Action by two months, up to and including October 6, 2004.

Applicants respectfully request reconsideration of this application and reconsideration of the Final Office Action mailed May 6, 2004 for the reasons set forth below.

No amendments are made by this response. Claims 1-11, 17-28, and 30-48 remain pending in this application, and these claims remain in the form set forth in the Amendment dated January 20, 2004.

Claims 1-11, 17-28, and 30-48 stand rejected under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) based on Tertitski, et al., U.S. Patent No. 6,493,681 (hereinafter "Tertitski"). Applicants respectfully traverse this rejection and request its reconsideration.

The Tertitski patent issued on December 10, 2002, which is after the filing date of the present application (filed June 13, 2000). The application that matured into the Tertitski patent was filed in the U.S. Patent and Trademark Office on August 11, 1999. Accordingly, Tertitski is potentially available against the present application only under 35 U.S.C. § 102(e).

The attached Declarations under 37 C.F.R. § 1.131 from inventors Neil Black and Peter Hansen demonstrate that the present invention was conceived and actually reduced to practice prior to the filing date of the Tertitski patent. Accordingly, the Tertitski patent is not available as prior art against the present application, and the present rejections are overcome. Applicants respectfully request that the Office withdraw the rejections based on Tertitski.

Entry and consideration of this Response is respectfully requested because it is believed that this Response overcomes all of the outstanding issues in this application and places the application in condition for immediate allowance. Because the Tertitski patent was newly cited and first relied upon in the May 6, 2004, Final Office Action, the attached Declarations could not have been presented earlier in prosecution.

Exhibits to the attached Declarations contain material that is subject to copyright protection. The copyright owner has no objection to the facsimile reproduction by anyone of these exhibits as they appear in the U.S. PTO's patent file or records, but it otherwise reserves all copyright rights whatsoever.

A separate Fee Transmittal paper accompanies this submission. However, if that paper is missing, or if any fees are required that are not accounted for in that paper, such as fees under 37 C.F.R. §§ 1.16 or 1.17, or if an extension of time is necessary that is not accounted for in the

Appln. No.: 09/592,660 (Attorney Docket No. 003797.86776)
Response dated September 28, 2004
Reply to Final Office Action of May 6, 2004

papers filed with this Response, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees.

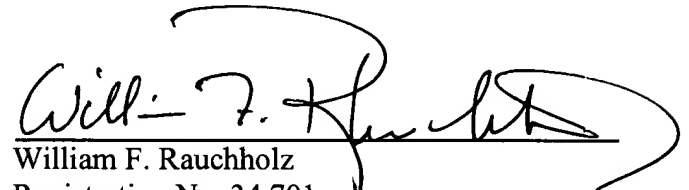
All rejections having been addressed, Applicants respectfully submit that this application is in condition for immediate allowance and respectfully solicit prompt notification of the same.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: September 28, 2004

By:


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